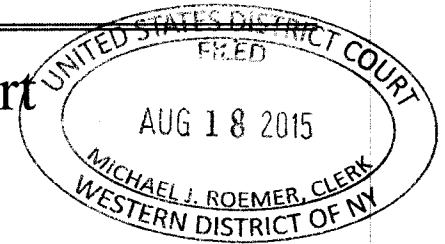


United States District Court

for the
Western District of New York



United States of America)

v.)

CHRISTOPHER EBERHARDT)

Defendant

Case No. ~~13-MJ~~

15-mg-4134

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between on or about the date of May 26, 2012 and February 13, 2015 in the county of Seneca in the Western District of New York, the defendant violated 18 U.S.C. § 2252A(a)(2)(A) & 2252A(a)(5)(B), an offense described as follows:

the defendant knowingly received child pornography that has been mailed or, using any means or facility of interstate or foreign commerce, been shipped or transported in or affecting interstate or foreign commerce by any mean, including by computer in violation of Title 18, United States Code, Section 2252A(a)(2)(A); and possession of child pornography, in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

This criminal complaint is based on these facts:

X Continued on the attached sheet.

Please see attached affidavit

Michael J. Dombek
Complainant's signature

Michael Dombek, S/A HSI
Printed name and title

Sworn to before me and signed in my presence.

Date: Aug. 18, 2015

Marian W. Payson
Judge's signature

City and State: Rochester, New York

Hon. Marian W. Payson, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK
COUNTY OF MONROE
CITY OF ROCHESTER

)
) SS:
)

15-mig-4134

I, **Michael Dombek**, being duly sworn, depose and state:

1. I am employed as a Special Agent with United States Department of Homeland Security, Homeland Security Investigations (HSI). I have been a Special Agent employed by HSI, and its predecessor, the United States Customs Service, for approximately twelve (12) years, and I currently am assigned to the Buffalo Field Office. As part of my daily duties as a Special Agent with HSI, I investigate crimes involving child exploitation and child pornography including violations pertaining to the transportation, production, distribution, receipt and possession of child pornography, in violation of Title 18, United States Code, Sections 2252 and 2252A. I have received specialized training in the area of child pornography and child exploitation, and I have had the opportunity to participate in child exploitation investigations.

2. I make this affidavit in support of a criminal complaint charging CHRISTOPHER EBERHARDT with violating Title 18, United States Code, Section 2252A(a)(2)(A), knowingly receiving child pornography that has been mailed or, using any means or facility of interstate or foreign commerce, been shipped or transported in or affecting interstate or foreign commerce by any mean, including by computer, and Title 18, United States Code, Section 2252A(a)(5)(B), possession of child pornography, as defined in Title 18, United States Code, 2256(8), that has been shipped and transported using any means and facility of interstate and foreign

commerce, that has been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, or that was produced using materials that had been mailed or shipped or transported in and affecting interstate and foreign commerce by any means, including by computer (the "Subject Offenses").

3. The statements contained in this affidavit are based upon personal knowledge, information provided to me by HSI agents, other law enforcement officers and personnel specifically trained in the seizure and analysis of computers and electronic media, and on my experience and training as a Special Agent with HSI. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that EBERHARDT did knowingly commit the Subject Offenses.

4. In 2012, HSI Special Agents executed an email search warrant on a Yahoo! email account that was engaged in sending and receiving images depicting the sexual exploitation of minors. The warrant yielded information that other email accounts had sent and/or received child pornography, including **cockgood7777777@gmail.com**. For example on May 26, 2012, at approximately 5:03 p.m., **cockgood7777777@gmail.com**, and others, received an email from Karen.naturist@gmail.com stating, "trade for me these pics I have more" and attaching five video files. I reviewed the video files and determined that they contain

child pornography, as defined in 18 USC § 2256. Two are summarized below as follows:

- a. **!!!NEW0602!!! Privado warrior dad making daughter gag.MPG:** A video file, approximately 15 seconds in length, depicting what appears to be a 3 to 5 year old female child performing oral sex on an adult male; and
- b. **(23)(1)(1).mpg:** A video file, approximately 15 seconds in length, that depicts what appears to be an approximate 10 -12 year old male child having anal sex with an approximate 8-10 year old male child.

7. On March 5, 2013, Google responded to a subpoena seeking subscriber information and IP log data for **cockgood7777777@gmail.com**. The Google account was subscribed to "cock sun", and the most recent login came from IP address 66.66.16.179 on February 28, 2013, 23:52:30 UTC. On March 14, 2013, Time Warner Cable provided the following subscriber information for IP address 66.66.16.179:

Name:	Rosie Gayhart
Address:	4407 State Route 414 Seneca Falls, New York 13148
Phone:	(315) 382-XXXX

Service on this account began on March 18, 2009, and the account remained active as of March 14, 2013, the date of Time Warner Cable's response to the summons.

8. On January 28, 2014, I conducted surveillance at 4407 State Route 414, Seneca Falls, New York 13148. At approximately 1:00 p.m., I observed three vehicles parked in driveways located on both sides of the subject residence: a Dodge

Caravan bearing NY license plate number FPP1978; an Oldsmobile Intrigue bearing NY license plate number FTE9204; and a Chevy Monte Carlo bearing license plate number DZZ5386. Registration inquiries revealed that: the Dodge Caravan was registered to Carl J. Gayhart at P.O. Box 77 4407, Main Fayette, New York 13065; the Oldsmobile Intrigue was registered to Robert Sprague at 4358 Route 414, Seneca Falls, New York 13148; and Chevy Monte Carlo was registered to Candace A. Eberhardt at P.O. Box 125, Fayette, New York 13065.

9. On February 13, 2014, at approximately 1:30 p.m., NYS Police Investigator Greg Schmitter and I conducted a knock and talk at 4407 State Route 414, Seneca Falls, New York 13148. Carl Gayhart answered the door, and after learning why we were there, invited us into the residence to investigate.

10. Inside the house, we encountered Robert Sprague. Sprague explained that he was a nephew of the Gayharts' and was currently living upstairs. We told him why we were there, and Sprague stated that he would cooperate with the investigation. Sprague stated that he doesn't view child pornography and that he has never seen any in the house. Sprague consented to agents viewing his computer to determine if child pornography was present. At this time HSI Forensic Special Agents Reggie Mathews and Joe Gillett entered the home and initiated a forensic preview of Sprague's computer. Forensic analysis of the Sprague computer was negative for the presence of child pornography. Sprague stated that he has lived at the residence for approximately three months, and before that, had lived down the road with a parent who had passed away. Sprague stated that he lived in the house

with his aunt and uncle, and his cousin, Brian Gayhart. Sprague stated that there were multiple computers located throughout the home. He stated that Brian Gayhart had a desktop computer, and that Brian's friend, CHRIS EBERHARDT, kept a laptop in Brian's room. Sprague stated that EBERHARDT would come over on almost a daily basis and use his laptop in Brian's room. He stated that Brian and EBERHARDT had been friends since they were kids, and that EBERHARDT was a neighborhood kid. Sprague stated that Brian and EBERHARDT would sometimes play video games, but that he often saw EBERHARDT by himself on his laptop in the room. Sprague walked to the closet of Brian's room and showed agent's EBERHARDT'S laptop, an ASUS LAPTOP, encased in a computer box. Sprague stated that he didn't care too much for EBERHARDT and felt he was creepy. Sprague stated that he had heard that EBERHARDT had formerly worked at a daycare center, but had been fired. Sprague provided EBERHARDT'S cell phone number as 315-XXX-2524.

11. Record checks conducted by Investigator Schmitter revealed that EBERHARDT (year of birth: 1983) had been the subject of a 2012 investigation by the Seneca Falls Police Department involving accusations that EBERHARDT had taken photographs of a ten year-old boy urinating in the bathroom at an area Walmart. No charges were brought against EBERHARDT. Calls placed to Elizabeth County Station Day Care confirmed that EBERHARDT had worked at the facility, and that he had been fired, but no information regarding why he had been fired could be ascertained.

12. On February 13, 2014, at approximately 2:30 p.m., your affiant and Investigator Schmitter attempted to speak with CHRIS EBERHARDT at his residence located at 1372 Prospect Street, Ovid, New York. Parked in front of the residence was the black Chevy Monte Carlo, bearing NY license plate number DZZ5386, previously observed at the Gayhart residence. Candace Eberhardt came to the front door, and we explained that we wanted to speak with her son, CHRIS EBERHARDT, concerning an investigation being conducted at the Gayhart residence. CHRIS EBERHARDT came to the front door and stepped outside. We advised EBERHARDT that a child pornography investigation was being conducted at the Gayhart residence, and that a computer was discovered belonging to him. EBERHARDT stated that he did not have any involvement with child pornography. EBERHARDT was asked if agents could check if he had any computers inside the house to which he and his mother said, "No." Candace Eberhardt stated that she would only let agents in if they had a warrant. Candace Eberhardt stated that they have one computer, but that it isn't hooked up, and that they have no internet connection. CHRIS EBERHARDT stated that he often goes over to the Gayhart residence and uses an ASUS LAPTOP, stored in the closet of Brian's room, to get on the internet. He stated that he uses the laptop, but that he does not own it. When questioned as to who owns it, he stated Brian. He stated that it was okay for agents to view the contents of the computer. CHRIS EBERHARDT was asked for a contact number to which he refused. We then left the residence and returned to the Gayhart residence.

13. While driving from the EBERHART residence to the Gayhart residence, Investigator Schmitter placed a call to Brian Gayhart. Brian was working at his job at Seneca Hospital. Investigator Schmitter explained to Brian the nature of the investigation and asked for his permission to view the contents of his computer, to which Brian agreed. Brian was asked about the ASUS LAPTOP in his closet, and he stated that it belonged to CHRIS EBERHARDT. He stated that it is CHRIS' computer, and that only EBERHARDT uses it.

14. Based on EBERHARDT'S verbal abandonment of the computer and his consent to agents to search the device, HSI CFA's conducted a forensic preview of the ASUS LAPTOP on February 13, 2014. Results of the preview confirmed the presence of child pornography. At approximately 3:30 p.m., the ASUS LAPTOP, Serial Number: C4N0CJ571930145, was seized and taken into custody by HSI agents. CFA Mathews prepared a disk of the preview which I reviewed. Examples of the videos that I reviewed include:

- a. **man sperm on dylan 11 yo 1 05.avi:** A video file approximately 45 seconds in length depicting an adult male ejaculating on the anus and buttocks of what appears to be a prepubescent male. The video was discovered in the item path: 1\D\users\ChrisE\Downloads\ man_sperm_on_dylan_11_yo_1_05_.avi.
- b. **2 Boys Suck Man's Cock Videos tnzone.flv:** A video file, approximately 45 seconds in length, depicting what appears to be two boys, approximately 10-12 years old, performing oral sex on an adult male. The video was discovered in the item path: 1\D\users\ChrisE\AppData\Local\Microsoft\Windows\TemporaryInternetFiles\ Content. IE5\QQNVX0TX\2 Boys Suck Man's Cock Videos tnzone.flv.

15. Sprague was asked about his observations concerning the ASUS LAPTOP. He stated that he has only witnessed EBERHARDT in possession of the laptop. EBERHARDT originally brought the laptop into the house from his car and when he would leave the house, he would take the device with him. He stated that EBERHARDT has been bringing the laptop to the house for approximately two years. At some point he began leaving the computer at the house. Sprague has witnessed EBERHARDT using the computer and has never seen anyone else using it. Sprague stated that EBERHARDT had told him that EBERHARDT had bought the computer.

16. Based on consent provided by Brian Gayhart, HSI CFA's conducted a forensic preview of the desktop located in Brian's room. The preview of the computer was negative for the presence of child pornography. On February 13, 2014, at approximately 4:00 p.m., Nancy Gayhart and Brian Gayhart returned home from work. Nancy Gayhart stated that EBERHARDT had been coming to the house for years. Brian Gayhart reiterated that the ASUS LAPTOP belonged to EBERHARDT. Agents left the residence at approximately 4:30 p.m.

17. On February 25, 2014, the Seneca County District Attorney's Office issued a grand jury subpoena to Verizon Wireless for subscriber information, all incoming and outgoing calls, texts and IP addresses for cell number 315-XXX-2524 for the period between March 1, 2013 and February 25, 2014. Verizon Wireless responded to the subpoena indicating that the account for cell number 315-XXX-2524 was established on December 9, 2008, and as of the date of response was active.

The cell number is subscribed to CHRIS A EBERHARDT at 125 P.O. Box 125, Fayette, NY 13065.

18. On March 4, 2014, the Honorable Marian W. Payson, United States Magistrate Judge, signed a search and seizure warrant for the aforementioned ASUS LAPTOP, Serial Number C4N0CJ571930145. Examination of the ASUS laptop conducted by HSI Computer Forensics Agent Gillett revealed multiple images and videos of what appear to be child pornography located on the hard drive.

19. CFA Gillett also recovered remnants of a Skype chat between user "goice7788 (Chris E)" and "fbritz13 (fbritz)". Based upon my training and experience, I am aware that Skype is a program that allows users to send instant messages and to connect using voice-over-IP technology. The chats CFA recovered on the ASUS laptop computer occurred on June 1 and 2, 2013. I have reviewed the chats and observed that during one part of the conversation, Skype user "goice7788 (Chris E)" encourages "fbritz13 (fbritz)" to contact his "older friend" through the email address **cockgood7777777@gmail.com**. At another point in the conversation, "fbritz13 (fbritz)" sends "goice7788 (Chris E)" a video file titled VIDEO-ICQ-20130531-225522-9.mp4. A video with this file name was found on EBERHARDT's ASUS computer, within user "Chris E's" "Downloads" folder. I have watched the video and observed that it depicts what appears to be a boy (approximately 8 years of old) whose genitals are digitally and orally stimulated by an older male.

20. Later in the chat, user "goice7788 (Chris E)" tells user "fbritz13 (fbritz)" "im not going to be on tomorrow sorry" and then asks "do you have any morn [sic] pics of you". User "fbritz13 (fbritz)" then asks "and u email?" to which user "goice7788 (Chris E)" responds "my email is **sunpan57@yahoo.com**" (emphasis added).

21. During his review, CFA Gillett recovered images of child pornography which appear to have been traded using Yahoo! Messenger. Based upon my training and experience, I am aware that, in addition to e-mail services, Yahoo! accounts allow users to engage in instant messaging, in which users may "chat" in real time with other users and exchange photographs with other users. CFA Gillett determined that "Sunpan57" is the only Yahoo! Messenger profile on the computer. The images were discovered in file path: Part_2\OS-NTFS\ProgramData\Yahoo!\Messenger\Photosharing\. The images are described as follows:

- a. **oew8XNYVL.NVhhGs5w7m_w--_m.jpg**: An image file of what appears to be a prepubescent male lying on a bed, fondling his penis. The file shows a create date of July 7, 2013, at 6:32:10 PM.
- b. **XNBDhF63z5Dd7Fb3ai.8LA--_m.jpg**: An image file of what appears to be a prepubescent male lying on a couch holding his erect penis. The file shows a create date of July 7, 2013, at 6:51:16 PM.

22. On April 25, 2014, your affiant issued a summons to Yahoo! for subscriber information and IP log history related to the user, email and communication account **sunpan57@yahoo.com**. Yahoo! responded indicating that the user account is subscribed to "Pan Sun". The account was created on December

28, 2011. The Alternate Communication Channel for the account is cell phone number 315-XXX-2524, which was previously found to be subscribed to CHRIS EBERHARDT. IP log history for sunpan57@yahoo.com shows sign in activity from IP address 66.66.16.179 on multiple occasions throughout April to September of 2013. IP address 66.66.16.179 is subscribed to Rosie Gayhart at 4407 State Route 414, Seneca Falls, NY 13148.

23. On July 14, 2014 the Honorable Marian W. Payson, United States Magistrate Judge, signed a Search and Seizure Warrant for the contents of email account **sunpan57@yahoo.com**. On July 22, 2014 Yahoo! responded to the warrant by providing contents of the email account, to include the user profile; login history; Yahoo Messenger friends list; a snapshot of the email account contents; a snapshot of the messenger account contents; and the Address Book contents.

24. I reviewed the contents of email account **sunpan57@yahoo.com** provided by Yahoo! and discovered two emails which appear to contain images and a video of child pornography. On July 22, 2014, **sunpan57@yahoo.com** received an email from crazymichael777@yahoo.com.ar titled "Milan". The body of the email contained the words: "Hope u like him :)" Attached to the email were seven (7) image files and one video file. The seven image files depict what appears to be an approximately 8 to 10 year old boy in various poses both naked and with underwear on. Examples of the images I viewed include image file **TBM-Milan04.jpg** which depicts what appears to be an approximate 8 to 10 year old boy naked with his hands on his buttocks and legs spread exposing his genital area. Image file

68a2560936adec61d6432001873bdd4e_4196304_IMG_3457z.jpg depicts the aforementioned prepubescent child lying on a bed naked while smiling at the camera.

25. On July 22, 2014, **sunpan57@yahoo.com** received an email from **crazymichael777@yahoo.com.ar** titled "milan vid". The body of the email contained the words: "here s a bigger video of the same". Attached to the email was one video file titled **Milan Director cut Video.wmv**. The video, approximately two (2) minutes in length, depicts what appears to be the previously described male child lying on a bed wearing a diaper and thrusting his pelvis into a pillow. The boy then turns over and places his hand under the diaper and appears to be rubbing his genitals. As the video progresses the boy is naked and begins to masturbate.

26. On February 9, 2015 the Honorable Jonathan W. Feldman, United States Magistrate Judge for the Western District of New York Rochester, signed search and seizure warrants for 1372 Prospect Street Ovid, NY, and for the person of Chris EBERHARDT.

27. On February 13, 2015, at approximately 10:30 a.m., NYS Police Investigators Schmitter and Crouch and I encountered EBERHARDT at Patsy's Drive In located at 0369 U.S. 20, Waterloo, NY 13165. EBERHARDT was seated inside the restaurant and was asked to come outside to speak with law enforcement. Once outside it was explained to EBERHARDT that he was not under arrest but law enforcement was there to execute a search warrant for his person. EBERHARDT

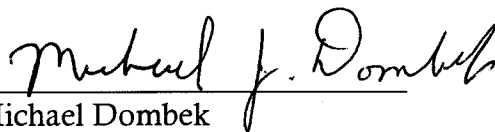
was searched by Investigator Schmitter. Discovered on EBERHARDT'S person were a wallet, keys and a Verizon LG cellular telephone. Pursuant to the federal search warrant SA Dombek seized the Verizon LG cellular phone.

28. After the search, we explained to EBERHARDT that we were conducting an investigation, and wished to speak to EBERHARDT concerning that investigation. It was reiterated that EBERHARDT was not under arrest, and that he was free to leave at any time. EBERHARDT stated that he would speak with law enforcement. EBERHARDT stated that he has seen images and videos of child pornography on his computer and that he has gotten the same through email. He stated that he has received and viewed this content because he is tracking individuals for the police. EBERHARDT stated that he has never contacted a police agency to report his findings but that he meant to in the future. EBERHARDT stated that he receives child porn through his email but never sends anything in return. EBERHARDT stated that the last time he was at the Gayhart residence, located at 4407 State Route 414 Seneca Falls, NY, he viewed child pornography on a computer. He stated that it was Robert Sprague who was responsible. Again EBERHARDT stated that he has viewed child pornography but that it was part of his investigation.


30. EBERHARDT stated that the cell phone found on him was his and that he had purchased it used from the internet. He stated that the phone has internet capabilities and that he has had it for approximately three and a half to four years. EBERHART stated that the desktop computers found in his house were his

and that he hasn't used them in approximately six years. EBERHARDT stated that his email address is **sunpan57@yahoo.com**. EBERHARDT stated that the computer seized from the Gayhart residence in February 2014 was his and that it was given to him by an individual named Chris. EBERHARDT was asked if he would be willing to provide a written statement. He stated that he would not. The interview was concluded at approximately 10:37 a.m.

31. Wherefore, based on the foregoing, I respectfully submit that probable cause exists to believe that CHRISTOPHER EBERHARDT did knowingly commit the Subject Offenses.


Michael Dombek
Special Agent
Homeland Security Investigations

Sworn and subscribed to
before me this 18 day
of August, 2015.


HONORABLE MARIAN W. PAYSON
United States Magistrate Judge